Ray H. Doyle, Jr. & Associates, Inc.
P.O. Box 2850
Brandon, Florida 33509
(813) 237-0098, FAX (813) 238-1624
ray@rhdoyle.com

04/25/2013

To Whom It May Concern:

Re: **Hearings on bill HB 4612**

I am based in Florida and have been active in the care planning, case management, and resolution of catastrophic injury cases for over 30 years throughout much of the country. Disability funding programs in which I have been active include: the National Vaccine Injury Act, worker's compensation systems, state automobile personal injury systems, Special Needs Trusts, and Michigan No-Fault cases. I, therefore, have a somewhat unique experience and perspective on different resolution paradigms.

The current issues in the Michigan legislature regarding the PIP (No-Fault) system prompt this letter. When compared to other states, Michigan has the most enlightened system that I have encountered. Please consider the following two catastrophic injury scenarios – the first is the typical state system and the second is the Michigan No-Fault system:

The typical state model

- At initial injury an application for coverage is made and the no-fault PIP is utilized until exhausted. In an overwhelming number of cases (and especially in the current economic situation) people opt for the least expensive PIP coverage and are underfunded for a catastrophic injury which leaves them reliant on community resources for a great deal of service.

- When the PIP is exhausted a claim against the at-fault party or uninsured motorist coverage is made. An attorney is retained with a fee generally set at 40% of the recovery, plus expenses, and a lawsuit is initiated. Considerations for recovery in this now adversarial setting include past and future medical costs, past and future wage loss and pain and

suffering. The opinion of treating professionals is lost in the debate between *experts* retained by opposing counsel.

- It takes about 4 to 5 years to settle a catastrophic injury case. During this time most people's finances are exhausted, and they apply for various government-funded support programs. People with such serious injuries often do not have or cannot qualify for health insurance, leaving them with forms of payment which some physicians do not accept. There is always a pressure for secondary gain, amplification, minimization, or a shift in causation of the injury which becomes a part of the adversarial setting. An injured person receives what care they can get under these community-based systems and they are left to adjust psychologically to 4 to 5 years of hardship and uncertainty. The result is that we all chip in to pay for their care resulting in a drain on Medicare/Medicaid, Social Security and food stamp programs until the case is settled.

- Once a settlement is reached or a verdict rendered then the final stages of the resolution begin. Even if the economic losses of plaintiff's life care plan are 100% funded – the attorney takes 40% off the top and then expenses. The result is that the injured person receives about 50% of the settlement amount.

- An attorney settling a catastrophic injury claim commits legal malpractice if the funds are not placed into a Special Needs Trust, the purpose of which is to continue the injured person's financial eligibility for Social Security, Medicare and Medicaid. Trusts are written so that trustees, who now have ownership and control of the settlement funds, must make the effort to get services through these income qualifying programs before providing assistance from the Trust. Trustees are paid for their services from these settlement funds, further reducing the amount of money available for care. The injured person is vulnerable to changes in the market and having these funds *churned* without their knowledge, as there are few reporting requirements or oversight for the expenditure of these funds except to make sure they do not violate Medicaid guidelines. Perhaps the most disturbing aspect of Special Needs Trusts is this: the funds are spent as the trustee decides, not as medical providers and treatment team members see as 'reasonably necessary' for the patient's care, recovery, and rehabilitation.

Consider the consequences of such a system: trial attorneys get a huge part of the settlement in fees, which encourages lawsuits; awards are based on life care plans that cannot possibly anticipate or exclude medical complications; the Trust agency makes a profit on managing the funds; the injured person's needs are not necessarily determined by care, recovery, and rehabilitation

considerations; the funds available for care can be left to the volatility of the marketplace; and the injured person has to wait for 4 to 5 years to even get to the point of a resolution, which puts them under tremendous financial pressure to take even a minimal settlement.

Perhaps most importantly, from a public policy/budgetary point of view, Social Security, Medicare, and Medicaid remain the primary funding sources for care, placing ever-increasing pressure on the system.

The Michigan No-Fault Model

- At injury, an application is made for coverage. Whether the injury requires only an emergency room visit or is truly a catastrophic event resulting in millions of dollars in costs, lifetime coverage for medically necessary expenses is available from the time of the accident for the care, recovery, and rehabilitation of injuries resulting from the accident. If a person needs a service and it is appropriately prescribed by a physician then it is provided; if it is not needed or used then it is not funded.

- Ongoing services for the care, recovery, and rehabilitation of the injured person are driven by medical opinion.

- When attorneys become involved in disputes over care issues, they can be paid, in most instances, by hourly attorney fees awarded separately from the recovery. If they lose there is no fee, which discourages bringing marginal issues to hearing or court; issues are brought to court or hearing only if there is substantive disagreement.

- Care plans are developed through a collegiate (team) process of communication between physicians, treating professionals, case managers and insurance adjusters. They are regularly reviewed within the standard of reasonable necessity for care, recovery, and rehabilitation.

Consider the positive consequences of the Michigan PIP (No-Fault) system: Treatment and services are initiated immediately; treatment decisions are driven by medical opinion and injured party choice; there is no incentive for attorneys to pursue marginal cases; the reasonableness of a treatment or care plan is subject to review by all concerned, encouraging a treatment team approach to planning and care.

In conclusion, who primarily benefits from the typical state PIP system: Plaintiffs' attorneys (who get 40% of the recovery), defense attorneys (who are encouraged to litigate), the expert witness community and insurance companies via inflated profit margins.

In stark contrast, with the Michigan No-Fault system the monies for the care, recovery, and rehabilitation of a catastrophically injured person go dollar-for-dollar directly into care and treatment. A competent plan of care can be developed and sustained with the patient's choice of providers. The psychological uncertainty of a 4 to 5 year wait for a recovery is avoided. Lastly, legislators and taxpayers are relieved of the complex burden of shifting the cost of care onto community-based funding sources.
The Michigan No-Fault system it is the best and most enlightened program in the country for the resolution of personal injuries and care of catastrophically injured people. Michigan should continue to be a beacon of enlightenment to the country with it's current PIP insurance program.

Sincerely,

Ray H. Doyle, Jr., M.A., C.R.C.

Certified Rehabilitation Counselor	#26561
Certified Vocational Evaluator	#03030
Certified Disability Management Specialist	#06744

Licensed by the State of Florida as:

Mental Health Counselor	#MH0000307
Marriage and Family Counselor	#MT0000323